



[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2014-0081]

Standard Format and Content of Transportation Security Plans for Classified Matter Shipments

AGENCY: Nuclear Regulatory Commission.

ACTION: Regulatory guide; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a new Regulatory Guide (RG) 7.13, "Standard Format and Content of Transportation Security Plans for Classified Matter Shipments." The guide describes a method that NRC staff considers acceptable for compliance with the agency's regulations with regard to the development of classified matter transportation security plans, which identify the correct measures to protect classified matter while in transport.

ADDRESSES: The document will be available for those who have established a "need-to-know" and possess access permission to Official Use Only-Security Related Information (OUO-SRI). To obtain the document, contact: Al Tardiff, Office of Nuclear Security and Incident Response, telephone: 301-287-3616 or e-mail: Al.Tardiff@nrc.gov

FOR FURTHER INFORMATION CONTACT: Al Tardiff, Office of Nuclear Security and Incident Response, telephone: 301-287-3616, e-mail: Al.Tardiff@nrc.gov, or Mekonen Bayssie, Office of

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SUPPLEMENTARY INFORMATION:

I. Introduction

The NRC is issuing a new guide in the NRC's "Regulatory Guide" series. This series was developed to describe and make available to the public information regarding methods that are acceptable to the NRC staff for implementing specific parts of the agency's regulations, techniques that the staff uses in evaluating specific issues or postulated events, and data that the staff needs in its review of applications for permits and licenses.

Regulatory guide RG 7.13 is withheld from public disclosure but is available to those affected licensees and cleared stakeholders who can or have demonstrated a need to know. The "Backfitting and Issue Finality" section describes previously issued guidance on this subject, which is entitled, Interim Staff Guidance (ISG) DSP-ISG-01, *Staff Review Procedure for Transportation Security Plans for Classified Matter Shipments* (July 7, 2006). This document also contains OUO-SRI information.

II. Additional Information

DG-7005, was published in the *Federal Register* on April 25, 2014 (79 FR 23015) for a 60-day stakeholders' comment period. The stakeholders' comment period closed on June 24, 2014. Stakeholders' comments on DG-7005 and the staff responses to the stakeholders' comments can be obtained [the](#) individuals listed in the FOR FURTHER INFORMATION section of this

document.

III. Congressional Review Act

This regulatory guide is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

III. Backfitting and Issue Finality

Issuance of this final regulatory guide does not constitute backfitting as defined in 10 CFR 50.109 (the Backfit Rule) and is not otherwise inconsistent with the issue finality provisions in 10 CFR part 52. This RG provides guidance on development of transportation security plans to protect classified information while such information is in transport, in order to meet the requirements of 10 CFR part 95. The staff has previously issued guidance on this subject in DSP-ISG-01, *Staff Review Procedure for Transportation Security Plans for Classified Matter Shipments* (July 7, 2006). The staff will use the guidance in the review and approval of new and amended transportation security plans submitted to the NRC. Current licensees with NRC-approved transportation security plans may continue to use DSP-ISG-01, which the NRC has found acceptable for complying with 10 CFR part 95 regulations as long as the licensees do not change their NRC-approved transportation security plans.

This regulatory guide does not constitute backfitting as described above, would not constitute backfitting under any of the backfitting provisions in 10 CFR Chapter I, nor would it be regarded as backfitting under Commission and Executive Director for Operations guidance. In addition, issuance of the RG would not otherwise be inconsistent with the issue finality provisions in 10 CFR part 52. The staff's position is based upon the following considerations.

1. Part 95 applies to materials licensees and other entities transporting (or placing into transport) classified security information, and contains requirements governing such transport. Although some of these materials licensees are protected by backfitting or issue finality provisions in 10 CFR part 52, these backfitting and issue finality protections do not extend to the procedures governing transport of classified information. For example, under the definition of backfitting in 10 CFR 50.109(a)(1), protection is afforded to nuclear power plant licensees against changes in, or new requirements and guidance on, *inter alia*, “procedures or organization required to...operate a facility.” Procedures governing the transportation of materials off of the facility site cannot reasonably be viewed as constituting such facility operating procedures. The backfitting and issue finality provisions applicable to other materials licensees are written in an analogous fashion. Therefore, changes to the guidance on compliance with 10 CFR part 95 – even if imposed on these materials licensees who are protected by backfitting or issue protection provisions in 10 CFR part 52 (see the discussion in item 2) – would not constitute backfitting or a violation of issue finality provisions under 10 CFR part 52.

2. Even if the NRC were to conclude that materials licensees are afforded backfitting protection with respect to procedures governing transportation of classified information, changes in guidance would not constitute backfitting as defined in the various NRC backfitting provisions unless imposed on materials licensees. As described earlier, the NRC staff does not intend to impose or apply the guidance in this RG to existing licensees who already have NRC-approved transportation security plans (the exception is where a licensee makes changes to or proposes to amend such plans; the backfitting and issue finality implications are discussed in item 3 below). Given this current lack of staff intention to impose the guidance in this RG, this would not constitute backfitting or a violation of issue finality provisions under 10 CFR part 52. If the staff seeks to impose a position in the RG 7.13 on

holders of already issued licenses in a manner which constitutes backfitting or does not provide issue finality as described in the applicable issue finality provision then the staff must make the showing as set forth in the applicable backfitting provision or address the criteria for avoiding issue finality as described applicable issue finality provision.

3. A licensing basis change voluntarily initiated by a licensee is not considered to be backfitting. In such cases, the policy considerations underlying the NRC's backfitting provisions, viz. regulatory stability and predictability concerning the terms of an NRC approval, are not applicable where the licensee itself voluntarily seeks a change to its licensing basis. This rationale is reflected in a July 14, 2010, letter from the NRC General Counsel to NEI's General Counsel (ADAMS Accession No. ML101960180)

4. Even if the NRC were to conclude that materials licensees are afforded backfitting protection with respect to procedures governing transportation of classified information, applicants and potential/future applicants for such materials licenses are not, with certain exceptions not relevant here, protected under either the various NRC backfitting provisions or the issue finality provisions under 10 CFR part 52. This is because neither the backfitting provisions nor the issue finality provisions under 10 CFR part 52 were intended for every NRC action which substantially changes the expectations of current and future applicants.

Dated at Rockville, Maryland, this 3rd day of June, 2015.

For the Nuclear Regulatory Commission.

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